



IT IS ORDERED as set forth below:

Date: December 02, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	CHAPTER 7
	:	
JOHN EMORY BOONE,	:	CASE NO. 10-63444-MGD
	:	
Debtor,	:	JUDGE DIEHL
	:	
DONNE FISHER, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 10-6209
	:	
JOHN EMORY BOONE,	:	
	:	
Defendant.	:	

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND
AWARDING ATTORNEY'S FEES**

This matter is before the Court on Plaintiff's Motion and Amended Motion to Compel

Discovery Responses Against Defendant John Emory Boone (“Motion”) and brief in support. (Docket Nos. 14, 15 & 16). Plaintiff seeks an order compelling the production of the following : (1) written responses to Plaintiff’s First Requests for the Production of Documents to Defendant; (2) a full and complete set of documents responsive to Plaintiff’s First Requests for the Production of Documents to Defendant; and (3) supplemental responses to Plaintiff’s First Interrogatories for numbers 4, 6, 7, 12, and 18. The Motion also seeks attorney’s fees in the amount of \$3,175.00. On November 30, 2010, the Motion came on for hearing. Present at the hearing were Kenneth R. Ozmet, counsel for the Plaintiff, and Carolyn V. Jordan, counsel for the Defendant. The Court ruled from the bench and ordered that the discovery responses be submitted by December 14, 2010. The Court also awarded attorney’s fees in the amount of \$2,500.00. This Order memorializes the Court’s oral ruling.

At the hearing, the parties agreed that no written responses to Plaintiff’s Request for Production of Documents had been filed. Defendant asserted that Plaintiff has many of the requested documents and all documents in Defendant’s possession were turned over to Plaintiff at Defendant’s deposition. Without written responses, there is no way to determine what documents Defendant possesses and what additional responsive documents must be produced. However, Defendant’s failure to timely respond to Plaintiff’s request is the source of this Motion. Defendant should have filed the responses with any appropriate objections to the requests. Without any written responses, there is no discovery dispute, only Defendant’s failure to comply with the Federal Rules. With respect to Plaintiff’s request to compel supplements to the five designated interrogatories, Defendant did not contest that supplemented responses were required.

Upon consideration of Plaintiff’s Motion and counsels’ arguments, the Court determined that

Plaintiff complied with Federal Rule of Bankruptcy Procedure 7037, which applies Federal Rule of Civil Procedure 37, and Local Rule 7037-1, and that the award of attorney fees was warranted under Rule 37(a)(5)(A).

Plaintiff seeks \$3,175.00 in fees, which was supported by Mr. Ozment's sworn declaration. (Docket. No. 16). The Court found the hourly rate was reasonable (\$250.00/hour), as was the number of hours spent preparing the motion (12.7 hours). The Court reduced the requested award because no certificate of service appeared on the docket and Defendant's counsel represented that she was not served with the Motion and had no knowledge of the Motion prior to her receipt of the Notice of Hearing. At the hearing, Plaintiff's counsel was unable to certify that Defendant has been served with the Motion. However, because the Court served the Notice of Hearing on Defendant, Defendant had, at a minimum, notice of the Motion and hearing as of November 3, 2010. Defendant took no further action to resolve the discovery deficiencies. Accordingly, it is

ORDERED that Plaintiff's Motion to Compel Discovery is hereby **GRANTED**.

It is **FURTHER ORDERED** that Defendant shall file written responses to Plaintiff's First Requests for the Production of Documents, file a full and complete set of documents responsive to Plaintiff's First Requests for the Production of Documents, and supplement responses to Plaintiff's First Interrogatories, Nos. 4, 6, 7, 12, and 18, by **December 14, 2010**.

It is **FURTHER ORDERED** that Plaintiff is awarded \$2,500.00 in attorney fees.

The Clerk's Office is directed to serve a copy of this Order upon Plaintiff, Defendant, and their respective counsel.

END OF DOCUMENT